



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 06, 2022

IN THE MATTER OF:

Appeal Board No. 623301

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 62300 and 623301, the claimant appeals from the decisions of the Administrative Law Judge filed March 16, 2022, which sustained the initial determinations, holding the claimant ineligible to receive Pandemic Unemployment Assistance (PUA) benefits, effective March 16, 2020; and charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits of \$11,700.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, \$8,690.50 in Pandemic Unemployment Assistance (PUA) benefits recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a), and charging Lost Wages Assistance (LWA) benefits of \$1,800.00 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5).

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was appearance by the claimant.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked for the employer, a supermarket, as a cashier from September

2019 until March 2020. The claimant has had mild asthma. She uses an inhaler about every day. The claimant believed that she was at a higher risk of contracting COVID-19 because of her asthma and also felt that commuting work to work by public transportation put her more at greater risk of being exposed

to COVID-19. On March 20, 2020, the claimant quit her employment because she did not want to contract COVID-19. She did not see her doctor or teleconference with her doctor in March 2020 and was not instructed by her doctor to quit her job or to quarantine. She also was not under any imposed quarantine related to COVID-19.

On May 8, 2020, the claimant completed an application for PUA benefits. On the application, when asked if she was unable to reach her place of employment due to an imposed quarantine or because she was advised by a medical provider to self-quarantine because of COVID-19, the claimant responded "Yes". During the period at issue, the claimant was not diagnosed with COVID-19; she was not being tested for COVID-19; no member of claimant's household had been diagnosed with COVID-19; claimant was not caring some someone diagnosed with COVID-19; claimant was not caring for a child unable to attend school or other facility which was closed due to COVID-19; claimant was not unable to reach his place of employment due a quarantine ordered by authorities; claimant was not unable to reach his place of employment because she was self-quarantined as ordered by a medical provider; claimant's current workplace was not closed due to COVID-19; she had not become a primary breadwinner because the head of her household died due to COVID-19; claimant was not prevented from starting work, as scheduled due to COVID-19; and, she had not quit her employment because of COVID-19.

The claimant received \$11,700.00 in FPUC benefits, \$8,690.50 in PUA benefits, and \$1,800 in LWA benefits.

OPINION: The Administrative Law Judge in 022-08200, filed April 22, 2022, overruled the initial determination charging a civil penalty, as the Department of Labor's determination did not include a basis for the willful misrepresentation. There was no appeal from that decision. We are bound by that decision holding that there was no willful misrepresentation to obtain benefits.

Pursuant to Labor Law § 597 (3), any determination regarding a benefit claim

may, in the absence of fraud or willful misrepresentation, be reviewed only within one year from the date it is issued because of new or corrected information. The Department of Labor initially redetermined the claimant's right to benefits by Notice of Determination dated November 15, 2021. Therefore, the Department possesses jurisdiction to redetermine the claimant's

right to benefits for dates prior to November 15, 2020 only if the claimant made a willful misrepresentation. As there was no willful misrepresentation, for purposes of jurisdiction, the Department of Labor lacked jurisdiction to redetermine benefits prior to November 15, 2020.

The credible evidence establishes that the claimant is not eligible for PUA benefits from November 15, 2020 through April 14, 2022, the date of the hearing. Although the claimant stated on her PUA application that she was unable to reach her place of employment due to an imposed quarantine or because she was advised by a medical provider to self-quarantine because of COVID-19, the claimant admitted that she did not see her doctor or teleconference with her doctor. In addition, the claimant does not contend that she contracted COVID-19. As a result, we are not persuaded that the claimant has been under an imposed quarantine nor was advised by a medical provider to self-quarantine. We therefore conclude that the claimant has not established that she is eligible for PUA benefits. Accordingly, the benefits received by the claimant from November 15, 2020 through April 14, 2022 were overpaid. Consistent with federal law, the FPUC and PUA benefits are recoverable. Likewise, as she was not entitled to the PUA benefits during this period, the LWA benefits were paid in error and are therefore recoverable.

The amount of the recoverable overpayment of FPUC, PUA and LWA benefits is referred back to the Department of Labor for recalculation in accordance with this decision.

DECISION: The decisions of the Administrative Law Judge are modified as follows and, as so modified, are affirmed.

In Appeal Board No. 62300, the initial determination, holding the claimant ineligible to receive Pandemic Unemployment Assistance (PUA) benefits, effective March 16, 2020, is modified to be effective November 15, 2020 through April 14, 2022, and, as so modified, is sustained.

In Appeal Board No. 623301, the initial determination, charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits of \$11,700.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, \$8,690.50 in Pandemic Unemployment Assistance (PUA) benefits recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a), and charging Lost Wages Assistance

(LWA) benefits of \$1,800.00 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5), is modified in accordance with this decision, and, as so modified, is sustained.

The amount of the recoverable overpayment of FPUC, PUA and LWA benefits is referred back to the Department of Labor for recalculation in accordance with this decision.

JUNE F. O'NEILL, MEMBER